IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5087 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BAI LACHHUBEN W/O PRATAP BAVANIYA SANSI

Versus

STATE OF GUJARAT

Appearance:

MR ARVIND K THAKUR for the Petitioner.

MR FM BATUNGE for Petitioner No. 1

Ms.Archana Raval, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 26/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner, who is a

lady detenue, has challenged her detention order dated 16th January, 2004, by which she is detained as a 'bootlegger' under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). Along with the detention order, the petitioner has also been served with the grounds of detention.

In the grounds of detention, there is a reference about seven pending criminal cases. All thee cases are under the Bombay Prohibition Act. The detaining authority, after considering the said cases and after considering the statements of witnesses, whose names have not been disclosed to the petitioner under Section 9(2) of the PASA, has detained the petitioner. It is the said order which is under challenge.

It is submitted on behalf of the petitioner that the cases filed against the petitioner are in connection with dealing in foreign liquor. He submitted that on the basis of individual cases, it cannot be said that the petitioner has violated public order, as, at the most, it can be said that there is violation of law and order situation. It is further submitted that the last registered offence is dated 19.8.2003 and the detention order is passed after about five months and the same is passed on 16.1.2004. It is submitted that in view of the delay in passing the detention order, the subjective satisfaction of the detaining authority can be said to have been vitiated.

In this connection, the learned Advocate for the petitioner has relied upon the decision of this Court in Elesh Nandubhai Patel v. Commissioner of Police, 1997(1) GLH 381, wherein this Court has observed as under in paragraph 21 :-

> " ... ...
>
> 21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority relied on two incidents of 2nd October and 10th October, 1996, both unregistered cases. I have gone through the allegations. I fail

> to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S. Ramamurthy reported in 1993(2) Suppli SCC 61.
>
> ... ..."

The averments made in this behalf in the petition have not been denied at all by filing any affidavit-in-reply. Since these averments regarding delay in passing the detention order are not controverted by filing any reply, nor any proper explanation is given, the order of detention is required to be set aside on the aforesaid ground.

It is hoped that, in future, the State Government or the detaining authority will take appropriate care in defending the matter in a proper manner by filing affidavit-in-reply.

The petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless she is required in connection with any other case. The Rule is made absolute accordingly.

26th July, 2004 (P.B. Majmudar, J.)

***

(apj)